IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 241 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ADITYA BIRLA NUVO LTD. - Applicant(s)
Versus
. - Respondent(s)

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Appearance :
SINGHI & CO for Applicant(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/05/2007

ORAL JUDGMENT

1. Leave to produce the Chartered Accountant's Certificate dated 7.5.2007 at Annexure – G.

2. Present Judge's Summons has been taken out by the applicant – Aditya Birla Nuvo Limited (transferee company) to dispense with the meetings of the equity shareholders, secured and unsecured creditors of the applicant company to consider and/or approve, with or without modification(s), the proposed scheme of amalgamation of Aditya Birla Insulators Limited with the applicant company.

3. Shri Mihir Joshi, learned Senior Advocate appearing on behalf of the applicant company has submitted that the rights and interest of the equity shareholders, secured and unsecured creditors of the applicant company are not affected by the scheme of amalgamation as proposed and therefore, it is requested to dispense with their meetings. It is also further submitted that under the scheme, no compromise is offered to any of the creditors whether secured or unsecured and neither any liability of the creditors under the scheme is being reduced or extinguished. Relying upon the

audited balance sheet as well as the certificate of the Chartered Accountant it is submitted that in case of transferor company, there is an excess of assets over liabilities to the tune of Rs.103.33 crores after adjustment of inter – company balances. It is also further submitted that in the case of transferee company there is an excess of assets over liabilities to the tune of Rs.3110.45 crores after adjustment of inter – company balances and that as per the audited balance sheet as at 31.3.2007, the aggregate excess of assets over liabilities of the transferor company and the transferee company is about Rs.3213.78 crores after adjustment of inter-company balances. Therefore, it is requested to dispense with the meetings of the equity shareholders, secured and unsecured creditors.

4. Having heard the learned counsel appearing on behalf of the applicant company and considering Clause – 11 of the scheme that no allotment of any shares would be made by the applicant

company to the shareholders of the transferor company and the rights of the shareholders of the applicant company are not affected as no new shares are being issued and that there would be no change in the capital structure of the applicant company and that the scheme does not involve reorganization of the share capital of the applicant company and accordingly, rights and interest of the shareholders of the applicant company are not affected by the proposed scheme, the meetings of the equity shareholders of the applicant company to consider and/or approve the proposed scheme of amalgamation is hereby dispensed with.

5. Considering the averments in paragraph – 15 of the application that under the scheme, no compromise is offered to any of the creditors whether secured or unsecured and neither any liability of the creditors under the scheme is being reduced or extinguished and considering the fact that as per the audited balance sheet as on 31.3.2007 in case of transferor company

there is an excess of assets over liabilities to the tune of Rs.103.33 crores after adjustment of inter-company balances and in case of the applicant company there is excess of assets to the tune of Rs.3110.45 crores after adjustment of inter-company balances and as per the audited balance sheet as at 31.3.2007, the aggregate excess of assets over liabilities of the transferor company and the transferee company is about Rs.3213.78 crores after adjustment of inter-company balances and as the interest of the secured and unsecured creditors of the applicant company are not in any way affected by the proposed scheme of amalgamation, the meetings of the secured and unsecured creditors of the applicant company to consider and/or approve the proposed scheme of amalgamation is hereby dispensed with.

6. This application is accordingly disposed of. No costs.

[M.R.Shah, J.]

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